



Australian Government

Australian Government response to the Senate
Legal and Constitutional Affairs Legislation Committee report:

Migration Amendment (Australia's Engagement in the Pacific and
Other Measures) Bill 2023, and the Migration (Visa Pre-application
Process) Charge Bill 2023

December 2024

Introduction

The Australian Government welcomes the opportunity to respond to the Senate Legal and Constitutional Affairs Legislation Committee's report, the Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Bill 2023, and the Migration (Visa Pre-application Process) Charge Bill 2023 (Committee Report) tabled on 13 June 2023.

The Australian Government's response to the report is set out below. The response addresses the recommendations contained in the report and in the additional comments.

This response has been developed through input from the following departments:

- Department of Home Affairs
- Department of Foreign Affairs and Trade

Recommendations

Recommendation 1: The committee recommends that the Senate pass the bills.

The Government supports this recommendation.

Dissenting report by Coalition Senators

Recommendation 1: It is recommended that permanent residency and citizenship of Australia should not be determined in any way by a lottery process. In any event, whether or not a lottery process should apply to a visa category should only be determined by Parliament through legislation, not by the Executive through regulation.

The Government does not support this recommendation.

The use of a ballot is an accepted part of immigration systems around the world, including New Zealand, Canada and the United States. It provides prospective visa applicants with equal opportunity to access highly subscribed visa programs, where the primary purpose of the program is not economic migration. The ballot process is intended to supplement and aid existing visa eligibility criteria as the basis of entry into Australia.

Recommendation 2: It is recommended that the Government develop a new approach to introduction of the Pacific Engagement Visa where merit is considered. Consideration should be given to recognising the contribution made by participants in the PALM scheme and how such participants could have access to the Pacific Engagement Visa.

The Government does not support this recommendation.

The intention of the Pacific Engagement Visa is to provide equal opportunity for eligible Pacific island and Timor-Leste nationals of all skill levels, genders and backgrounds to access permanent residency through the ballot process. Providing preferential access based on merit would not align with this intention.

PALM scheme workers on valid visas will be able to register in the Pacific Engagement Visa ballot and if successful, apply for and transition to this visa onshore.

Recommendation 3: It is recommended that the Government enter further discussions with community representatives from the Pacific Islands diasporas in Australia, including the Cook Islands and Niue diasporas who made submissions to the inquiry to explore ways in which the Pacific Engagement Visa can be made accessible to the people of the Cook Islands and Niue and potentially other members of the Pacific Family who are currently excluded. As a matter of principle, pathways to enter into Australia via New Zealand should not be relevant.

The Government notes this recommendation.

The Government has and will continue to consult widely, including with Pacific partners and Pacific diaspora communities in Australia, on the design and implementation of the Pacific Engagement Visa.

Country participation and visa allocations for the program have been determined through consideration of a range of factors, including population size, diaspora in Australia, expected demand, existing migration pathways to enter into Australia, and partner countries views.

Recommendation 4: It is recommended that if the Bill proceed there be a weighting mechanism to ensure that the visa is available to communities across the Pacific given differences in population sizes.

The Government notes this recommendation.

Visa allocations will be reviewed annually by the Government and will continue to consider variables such as population size, diaspora in Australia, existing migration opportunities, expected demand and the views of partner governments.

Recommendation 5: It is recommended that the Senate not pass the Bill in its current form, but that further work be undertaken to develop a Pacific Engagement Visa which takes into account the above recommendations and the legitimate concerns raised by key stakeholders during the course of this inquiry.

The Government does not support this recommendation.

The Government has considered this recommendation as part of broader considerations discussed in response to recommendations 1 to 4.

Additional Comments from Senator Nick McKim

Recommendation 1: That the Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Bill 2023 be amended to either explicitly limit its powers to the provision of a Pacific Engagement Visa, or to explicitly prohibit the use of the powers provided in the Bill for any visa subclasses within Australia's refugee and humanitarian program.

The Government agrees to this recommendation.

The Government has expressly excluded Australia's Refugee and Humanitarian visa programs from the scope of the visa pre-application powers in the *Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Bill 2023*.